



**Hundredth Legislature - First Session - 2007
Committee Statement
LB 108**

Hearing Date: January 30, 2007
Committee On: Agriculture

Introducer(s): (Agriculture)
Title: Change provisions relating to fence disputes

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

7	Yes	Senators Dierks, Wallman, McDonald, Karpisek, Dubas, Preister, and Erdman
0	No	
0	Present, not voting	
1	Absent	Senator Chambers

Proponents:

Rick Leonard

Sherry Schweitzer
Michael Kelsey
Jon Edwards
John K. Hansen

Representing:

Introducer, Research Analyst, Agriculture Committee
Seward County Clerks Office
Nebraska Cattlemen
NACO
Nebraska Farmers Union

Opponents:

Representing:

Neutral:

J. David Aiken

Representing:

At committee's request

Summary of purpose and/or changes:

LB 108 is a substantial modernization of the law of division fences (§34-101 to §34-117). The bill redefines the responsibility of adjacent landowners for division fences, eliminates provisions for fence viewers and duties of counties with respect to fence disputes, and provides for a direct cause of action under prescribed procedures for pursuing contribution for fences.

The primary changes are found in sections 3 and 6, and in the sections outright repealed under section 10 of the bill. The elements of the bill include the following:

- §34-102 is amended by section 4 to redefine circumstances when adjoining landowners are assigned shared responsibility for fence construction and maintenance and the proportional contribution each is liable for. Current section §34-102 assigns a duty to each landowner to make and maintain a “just proportion” of the fence between them unless neither landowner desires a fence. LB 108 would make the following changes:
 - Clarifies that within areas zoned primarily for agricultural or horticultural use, the duties assigned adjoining landowners under the section applies when either or both properties are used for agricultural use. An area zoned primarily for agricultural or horticultural use is defined by reference to similar terminology under greenbelt statutes (§77-1343). In all other areas of the state, the law would apply only when both adjoining properties are utilized for agricultural use
 - Retains provision of existing law that adjoining landowners have responsibility to contribute a “just proportion” but specifies an equal share allocation only when both landowners utilize the fence for livestock enclosure. Retains current law specification that this section does not compel construction of a division fence neither landowner desires.
 - Section §34-112 pertaining to liability for repair of a damaged fence is amended by section 4 to conform with the proportional allocation of liability and locational specifications of §34-102 as amended by Section 3 of the bill. A duty to respond to a request for performance of such duty with this section is made obsolete by section 6 of the bill and eliminated.
 - A conforming citation to the law of division fences contained in §37-1012 is made by Section 8 of the bill. .
- Existing causes of action to allow landowners to recover one-half of the construction cost of a new fence and to recover costs of repair of a damaged fence that are the responsibility of an adjacent landowner contained in outright repealed sections §34-103 and §34-113 are consolidated and replaced in a new section 6. Section 6 provides as follows:
 - Provides that a landowner gives rise to a cause of action to compel an adjacent landowner to fulfill his or her statutory duties for contribution by first serving upon the adjacent landowner written notice of intent to construct, maintain or repair a division fence. The notice is to contain a request that the adjoining landowner fulfill statutory fencing duties through actual physical construction or financial contribution. Clarifies that after giving notice, a landowner may initiate or complete construction or repairs, in which case the cause of action would be for contribution only.
 - If the adjacent landowner is unresponsive to the written notice, the landowner may commence an action within one year of giving written notice in the county court of the county where the fence is located. The action may be commenced by filing a form for such purpose prescribed by the state court administrator. Notice and summons of such

action are to be given according to procedures modeled upon those specified for actions initiated in small claims court.

- Directs that parties are to receive information regarding mediation services available as alternative dispute resolution, and with consent of both parties, a court may refer to mediation. Harmonizing changes to the Farm Mediation Act are made by sections 1 and 2 of the bill to accommodate acceptance of referred fence disputes
 - If mediation succeeds in mutually signed agreement, the court enters the agreement as the judgment. Parties pay mediation costs directly to the mediation service
 - If mediation fails, or the parties do no request mediation, then the case proceeds according to normal civil procedure.
- A limited right of entry upon adjacent land necessary for fulfilling fencing responsibilities is defined in new Section 5 of the bill. Section 5 defines access as confined to that reasonably necessary to carry out activities contemplated under the law. The section further specifically excludes authorization for tree removal or other alteration upon other property, or removal of personal property, without consent of the landowner or court order.
 - Specifies that existing law and procedure continues to apply only to division fence disputes arising before the effective date of the bill.
 - Outright repeals sections §34-104 through §34-111 which currently provide for the appointment of fence viewer panels to hear and determine fence disputes. Current law assigns duties to county clerks to maintain and appoint fence viewers and to collect costs of construction or repair of division fences ordered by fence viewers through special assessment.
 - Outright repeals §34-101 which authorizes placing a protection fence to assist the growth of live fences adjacent to a public road or highway for a period of seven years.

Explanation of amendments, if any:

The committee amendments change the term “petition” to “complaint” to designate the document initiating the civil process contained in section 6.

Senator Philip Erdman, Chairperson